
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Frank Rodriguez

Paterson, NJ

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File Number: EB-08-NY-032

NAL/Acct. No: 200832380007

FRN: 0017 5086 15

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 9, 2008

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Frank Rodriguez apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating an unlicensed radio transmitter on the frequency 90.5 MHz in Paterson, NJ. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Frank Rodriguez is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On February 2, 2008, in response to an interference complaint, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 90.5 MHz in Paterson, NJ. The agent observed a radio station broadcasting on 90.5 MHz and determined that the station was operating from a private house at 276 Ellison Street, Paterson, NJ 07501. The agent observed an FM broadcast antenna on the roof of 276 Ellison Street. The agent subsequently took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s Rules (“Rules”)³ and therefore required a license. An agent searched Commission databases and found no evidence of a Commission authorization for this operation on 90.5 MHz in Paterson, NJ.

3. Later on February 2, 2008, Commission agents, accompanied by Paterson Police officers, knocked on the door of the house at 276 Ellison Street, Paterson, NJ 07501, and a tenant answered. The agent asked the tenant about the operation of the unlicensed station at that location. The tenant said she had no knowledge of the station. The agents and police requested permission to go to the back of the house to determine where the coaxial cable from the antenna was going and the tenant agreed.

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

³ Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239. Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed Part 15 transmitter.

4. Agents and police traced the coaxial cable from the antenna on the roof of the house to a crawl space behind the house. The agents asked the tenant for the name and phone number of the owner of the house, which the tenant said was Frank Rodriguez and gave his cell phone number. The agents contacted Mr. Rodriguez and explained to him about the operation of the unlicensed station at his house. Mr. Rodriguez claimed he had no knowledge of the station operation. The agents requested that Mr. Rodriguez meet with him at the house to discuss this issue further. Mr. Rodriguez arrived at the house and met with the agents. The agents showed Mr. Rodriguez the FM broadcast antenna on the roof of the house and the coaxial cable from the antenna going into a crawl space behind the house. Mr. Rodriguez pulled away a wooden board covering up the crawl space and agents observed an FM transmitter, computer, and modem in that space. The agents requested that Mr. Rodriguez take down the FM broadcast antenna from the roof as soon as possible, remove all radio station equipment from the crawl space behind the house, and find out who the antenna and the equipment belonged to and report back to the NY Office with this information, to which Mr. Rodriguez agreed. The agents gave Mr. Rodriguez a verbal warning on the consequences of allowing this unlicensed radio station on 90.5 MHz to operate on his property at 276 Ellison Street, Paterson, NJ 07501.

5. On February 5, 2008, the New York Office sent, via regular mail and certified mail, return receipt requested, a Notice of Unlicensed Operation (“*NOUO*”) addressed to Frank Rodriguez at 276 Ellison Street, Paterson, NJ 07501. The *NOUO* warned Mr. Rodriguez that operation of the unlicensed radio station on 90.5 MHz violated Section 301 of the Act and outlined the potential penalties for such a violation, including seizure of the equipment, fines and imprisonment. The *NOUO* also directed Mr. Rodriguez to terminate operation of the unlicensed station immediately and provided Mr. Rodriguez ten days to reply. Mr. Rodriguez did not reply. The *NOUO* sent via certified mail was later returned to the New York Office by the U.S. Postal Service as unclaimed. The *NOUO* sent via regular mail was not returned to the New York Office.

6. On March 1, 2008, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 90.5 MHz in Paterson, NJ. The agent observed a radio station broadcasting on 90.5 MHz and again determined that the station was operating from a house at 276 Ellison Street, Paterson, NJ 07501. The agent observed an FM broadcast antenna on the roof of 276 Ellison Street and traced the coaxial cable from the antenna going into a crawl space behind the house. The agent subsequently took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore required a license.

7. On April 4, 2008, a Commission agent conducted research online and found property records on the Paterson, NJ website confirming that Rodriguez is the owner of the property located at 276 Ellison Street, Paterson, NJ 07501.

III. DISCUSSION

8. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term “repeated” means the

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

commission or omission of such act more than once or for more than one day.⁵

9. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. Section 3(33) of the Act defines “communications by radio” as “the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things the receipt, forwarding, and delivery of communications) incidental to such transmission.”⁶ Agents determined that, on February 2, 2008 and March 1, 2008, an unlicensed radio station was broadcasting on 90.5 MHz from 276 Ellison Street, Paterson, NJ 07501. Property records confirmed that Mr. Rodriguez owns the property at 276 Ellison Street in Paterson, NJ. Despite verbal and written warnings to Mr. Rodriguez, the unlicensed radio station on 90.5 MHz continued to operate from Mr. Rodriguez’s property. We have previously held that liability for unlicensed operation may be assigned to an individual who provides services and facilities incidental to the transmission of communications by radio.⁷ We find that Mr. Rodriguez is responsible for the unlicensed station operation on 90.5 MHz at 276 Ellison Street, Paterson, NJ 07501 and that his actions amounted to willful and repeated violations of Section 301 of the Act.

10. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁹ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Frank Rodriguez is apparently liable for a (\$10,000) forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Frank Rodriguez is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.¹⁰

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Frank Rodriguez **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

⁶ 47 U.S.C. § 153(33).

⁷ See *Joni K. Craig*, Forfeiture Order, 21 FCC Rcd 10793 (EB 2006).

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

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13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014 and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Frank Rodriguez at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office
Northeast Region
Enforcement Bureau